

CHAPTER 880

CHILD SUPPORT ENFORCEMENT PROGRAM.

- PART I Definitions.
- PART II General Information.
- PART III Location.
- PART IV Establishing Child Support Obligations.
- PART V Enforcing Child Support Obligations.
- PART VI Administrative Appeals.
- PART VII Interstate Responsibilities.
- PART VIII Confidentiality and Exchange of Information.
- PART IX Rights and Responsibilities of the ~~Custodial Parent~~ Applicant/Recipient
and of the Department.
- PART X Processing Support Payments.
- PART XI Case Closure.
- PART XII Cost Recovery.

PART I.

Definitions.

22 VAC 40-880-10. Definitions.

22 VAC 40-880-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"AFDC" means Aid to Families with Dependent Children which is established under Title IV-A of the Social Security Act. This is a category of financial assistance paid on behalf of children who are deprived of one or both of their parents by reason of death, disability, or continued absence (including desertion) from the home. See also "TANF."

"AFDC/FC" means Aid to Families with Dependent Children or Foster Care, which is established under Title IV-E of the Social Security Act. This is a category of financial assistance paid on behalf of children who otherwise meet the eligibility criteria for AFDC and who are in the custody of local social services agencies.

“Absent Parent” means a responsible ~~parent~~ parent person, as defined in ~~§ 63.1-249~~ § 63.1-250 of the Code of Virginia who is required under law to support a dependent child or the dependent child and the child's caretaker.

“Administrative” means noncourt ordered, legally enforceable actions the department may take to establish, modify, collect, distribute or enforce a child support obligation.

“Appeal” means a request for a review of an administrative action taken by the division, or an action taken to contest a court order.

“Application” means a written document requesting child support enforcement services which the department provides to the individual or agency applying for services and which is signed by the ~~custodial parent or agency representative~~ applicant.

“Applicant or applicant/recipient” means a party who applies for, and receives services from the Division.

“Arrears or arrearage” means unpaid child or medical support payments, interest, and other costs for past periods owed by a parent to the state or obligee. This may include unpaid spousal support when child support is also being enforced.

"Assignment" means any assignment of rights to child, spousal, or medical support or any assignment of rights to medical support and to payments for medical care from any third party.

"Bad check" means a check not honored by the bank on which it is drawn.

"Case summary " means a written statement outlining the actions taken by the department on a case which has been appealed.

"Child Support Guideline" means a federal requirement for the establishment and adjustment/modification of financial child support and is comprised of §§ 20-108.1 and 20-108.2 of the Virginia Code.

"Custodial parent" or obligee means (i) the natural or adoptive parent with whom the child resides, (ii) a stepparent or other person who has physical custody of the child and with whom the child resides, or (iii) a social service agency which has legal custody of a child in foster care.

"Debt" means the total unpaid support obligation established by court order, administrative order, or payment of public assistance that is owed by an ~~absent parent~~ obligor to either the custodial parent/obligee, ~~or~~ to the Commonwealth, ~~or his~~ to the obligor's dependents.

~~"Default obligation" means an obligation based on factors other than the absent parent's ability to pay because of the absent parent's failure to provide financial information.~~

"Delinquency" means an unpaid ~~child support obligation~~ child or medical support obligation. The obligation may include spousal support when child support is also being enforced.

"Department" means the Virginia Department of Social Services.

~~"Disregard payment" means a payment made to an AFDC recipient in an amount up to \$50. The payment is made from the current child support collected on the individual's behalf.~~

"District office" means a local office of the Division of Child Support Enforcement (DCSE) responsible for the operation of the Child Support Enforcement Program.

"Division" means the Division of Child Support Enforcement of the Virginia Department of Social Services, also known as a IV-D agency.

"Enforcement" means ensuring the payment of child support through the use of administrative or judicial means.

"Erroneous payment" means a payment sent to the custodial parent/obligee for which no funds were received by the department to be paid to that ~~client~~ applicant/recipient.

"Financial statement" means the provision of financial information from the ~~custodial~~ parent and absent parent showing their financial situation parents.

"Foreclosure" means a judicial procedure to enforce debts involving forced judicial sale of the real property of a debtor.

"Genetic ~~blood~~ testing" means scientifically reliable genetic tests, including blood tests, as described in §§ 20-49.1, 20-49.3, 20-49.4, ~~and~~ 20-49.8, and 63.1-250.1:2 of the Code of Virginia.

"Good cause" means, as it pertains to TANF and AFDC/FC applicants and recipients, an agency determination that the individual does not have to cooperate with Division of Child Support Enforcement in its efforts to collect child support.

"Health insurance coverage" means any plan providing hospital, medical, or surgical care coverage for dependent children provided such coverage is available and can be obtained by ~~an absent~~ a parent at a reasonable cost.

"Hearings officer" means a disinterested person designated by the department to hold appeal hearings and render appeal decisions on administrative actions.

"IV-D agency" means a governmental entity administering the child support program under Title IV-D of the Social Security Act. In Virginia the IV-D agency is the Division of Child Support Enforcement.

"Interest" means charges accrued on past due child support at the prevailing judgment rate.

"Judicial" means an action initiated through a court.

"Location only services" means that certain entities such as courts and other state child support enforcement agencies can receive only locate services from the department.

"Local social service agency" also known as a IV-A agency means one of Virginia's locally administered social service or welfare departments which operate the ~~AFDC~~ TANF and AFDC/FC programs and other programs offered by the department.

"Location" means obtaining information which is sufficient and necessary to take action on a child support case including information concerning (i) the physical whereabouts of the ~~absent parent~~ obligor or ~~his~~ the obligor's employer, or (ii) other sources of income or assets, as appropriate.

"Medicaid only" means a category of public assistance whereby a family receives Medicaid, but is not eligible for or receiving AFDC.

"Medical support services" means the establishment of a medical support order and the enforcement of health insurance coverage or, if court ordered, medical expenses.

"Mistake of fact" means an error in the identity of the ~~absent parent~~ obligor or in the amount of ~~child~~ support owed.

"Noncustodial parent" means a responsible person , as defined in § 63.1-250 of the Code of Virginia, who is obligated under Virginia law for support of a dependent child or child's caretaker.

"Occupational License" means any license, certificate, registration, or other authorization to engage in a business, trade, profession, or occupation issued by the Commonwealth, pursuant to Title 22.1, Title 38.2, Title 46.2, or Title 54.1 of the Code of Virginia or any other provision of law.

"Obligation" means the amount and frequency of payments which the ~~absent parent~~ obligor is legally bound to pay as set out in a court or administrative support order.

"Obligee" means an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered.

“Obligor” means an individual , or the estate of a decedent, who owes or is alleged to owe a duty of support, is alleged but has not been adjudicated to be a parent of a child, or is liable under a court order.

“Past due support” means support payments determined under a court or administrative order which have not been paid.

“Pendency of an appeal” means the period of time after an administrative appeal has been made and before the final disposition by an administrative hearing officer, or between the time a court hears a case and renders a final decision.

“Public assistance” means payments for ~~AFDC-TANF~~, or AFDC/FC, or Medicaid.

“Putative father” means an alleged father; a person named as the father of a child born out-of-wedlock but whose paternity has not been established.

“Reasonable cost” means, as it pertains to health insurance coverage, available through employers, unions, or other groups without regard to service delivery mechanism.

“Recipient” means a person ~~receiving public assistance~~ who has applied for or is in receipt of public assistance or child support enforcement services.

“Recreational license” means any license, certificate, or registration used for the purpose of participation in games, sports, or hobbies, or for amusement or relaxation.

"Service" or "service of process" means the delivery to or leaving of a child support document, in a manner prescribed by state statute giving the ~~absent parent party~~ party reasonable notice of the action being taken, ~~against him and affording the person an opportunity to be heard~~ regarding the matter.

"Subpoena" means a document commanding a person to ~~produce~~ appear at a certain ~~designated information~~ time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document compelling production of specific materials relevant to facts in a pending judicial proceeding.

"Summary of facts" means a ~~written statement of facts outlining the actions taken by the~~ department on a case which has been appealed.

"Summons" means a document notifying an absent or custodial parent that he or she must appear at a time and place named in the document to provide information needed to pursue child support actions.

"Supplemental Security Income" means a program administered by the federal government which guarantees a minimum income to persons who meet the requirement of aged, blind, or disabled.

“Support order” means a judgement, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys’ fees, and other relief.

“TANF” means Temporary Assistance for Needy Families, formerly known as AFDC.

Statutory Authority

§ 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 1.1; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

PART II

General Information.

ARTICLE 1.

Services.

22 VAC 40-880-20. Services provided.

22 VAC 40-880-30. Eligibility for services.

22 VAC 40-880-30. Eligibility for Services.

A. Individuals ~~residing in Virginia~~ who ~~receive~~ apply for AFDC TANF, AFDC/FC, or Medicaid only assistance are automatically eligible for child support services.

1. ~~AFDC TANF~~ and AFDC/FC applicants and recipients must subrogate all rights to support to IV-D, which includes all ~~accept~~ child support services as a condition of eligibility for public assistance unless ~~the local social service agency determines that~~

~~good cause exists~~ a determination of good cause has been made for the IV-D agency not to pursue child support ~~not accepting these services.~~

2. Medicaid ~~only~~ applicants ~~and~~ /recipients must accept medical support and paternity establishment services as a condition of eligibility for Medicaid unless the local social services agency determines that good cause exists for not accepting these services.

3. The department shall close a child support case in which the local social service agency has determined that good cause exists for not cooperating with the department in its pursuit of child support.

4. The department shall continue to provide child support services to ~~a custodial parent~~ when the an individual whose TANF AFDC, AFDC/FC, or Medicaid only case closes.

a. The department shall provide these services without requiring a formal application.

b. The department shall continue to provide these services until the ~~custodial parent~~ applicant/recipient states in writing that the services are no longer wanted. This request will result in ~~unless the~~ closure of the child support case unless this action is contrary to state or federal law, or outstanding arrears are owed to the state for TANF previously paid.

~~B. Individuals residing in Virginia or having a legal residence in Virginia who do not receive~~ An individual who is not receiving TANF AFDC, AFDC/FC, or Medicaid only assistance must make an application for child support services as a condition of eligibility for those services with the exception that an application is not required for cases transferred from the courts to the department on or after October 1, 1985. For such cases the payee shall be deemed as having executed an authorization to seek or enforce a support obligation with the department unless the payee specifically indicates that the department's services are not desired.

1. The child for whom child support is being requested must have an order in place for his or her support, or be under 18 years of age, ~~unless:~~

~~a. There is a court order specifying that support continue until a later age, or~~

~~b. The child is handicapped, or~~

~~c. The services being requested are for a child support obligation which existed prior to the child's 18th birthday.~~

2. If the child for whom support is being sought is under 18 years of age, the applicant must be the parent or physical guardian of the child, ~~and the child must reside with the applicant.~~

C. Individuals residing outside of Virginia shall be eligible for child support services:

1. Upon a request for services from the IV-D agency in the state in which they reside; ~~and~~
or
2. Upon receipt of an application from non-resident individuals and accompanying documentation.

~~D. Courts and other state IV-D agencies are eligible for location only services.~~

E. D. Locate-only services.

1. Custodial parents may apply for locate-only services.
2. Non-custodial parents may apply for locate-only services for custody and visitation purposes only.
3. Courts and other state IV-D agencies are eligible for child support enforcement services or for location only services.

Statutory Authority

§ 63.1-25, ~~63.1-249 and 63.1-274.10~~ and 63.1-273 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 2.2; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 2.

Department as Payee

22 VAC 40-880-60 Special conditions regarding receipt of ~~AFDC~~ TANF or AFDC/FC.

22 VAC 40-880-60 Special conditions regarding receipt of ~~AFDC~~ TANF or AFDC/FC.

~~A. Pursuant to §63.1 251, R~~receipt of ~~AFDC~~ TANF or AFDC/FC assistance creates a debt to the Commonwealth.

~~B. If a debt is owed to the Commonwealth due to the receipt of AFDC or AFDC/FC assistance, the department shall apply amounts collected for past due support toward this debt unless the court order stipulates otherwise.~~

~~C. Money received from tax intercept shall be applied, in total, toward the AFDC or AFDC/FC debt.~~

Statutory Authority

§§ ~~63.1-25, 63.1-249 and 63.1-274.10~~ 63.1-251 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 2.5; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 3.

Application.

22 VAC 40-880-80. Application process.

22 VAC 40-880-80. Application process.

A. The department shall make applications accessible to the public and shall include with each application information describing child support enforcement services, and the ~~custodial parent's~~ applicant's rights and responsibilities, ~~the absent parent's rights, and~~ ~~payment distribution policies.~~

1. The department shall provide an application on the day an individual requests the application when the request is made in person.

2. The department shall send applications within five working days of the date a written or telephone request for an application is received.

B. The department shall provide ~~AFDC TANF~~, AFDC/FC, and Medicaid ~~only~~ recipients with the above information, and the rights and responsibilities of ~~custodial parents applicants, the absent parent's rights and general distribution policies~~ within five working days of receiving the referral from a local social service agency.

C. The department shall, within two calendar days of the date of application from a nonpublic assistance recipient or from the date a referral of a public assistance recipient is received, establish a case record, and within 20 calendar days, obtain the information needed to locate the ~~absent~~ noncustodial parent, initiate verification of information, if appropriate, and gather all relevant facts and documents.

Statutory Authority

§ 63.1-25; and 63.1-249 ~~and 63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 2.7; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 5.

Service of Process.

22 VAC 40-880-110. Service of process.

22 VAC 40-880-110. Service of process.

Service is necessary when child support obligations are established either administratively or through court action and, in some instances, when actions to enforce the obligation are taken. The department shall use diligent efforts to serve process as allowed by law.

~~A. The methods of service of process required by law vary with the action being taken and include individual personal service, substituted service, posted service, certified, and regular mail.~~

~~B. The department shall use diligent efforts to serve process. Diligent efforts to serve process shall include:~~

~~1. When the method of service of process used to notify an absent parent of an administrative action is not successful and the address of the absent parent is known and verified, the department shall exhaust every method of service allowed by law.~~

~~2. When the method of service of process used to notify an absent parent of court action is not successful and the address of the absent parent is known and verified, the department shall provide the sheriff or process server with additional information about the absent parent's address.~~

~~3. When the method of service of process is not successful after the department has~~

~~exhausted all methods of service allowed or has provided the sheriff or process server with an additional information, the department shall repeat its attempts to serve process at least quarterly.~~

Statutory Authority

§§ 8.01-296, 8.01-320, 8.01-329, and 63.1-25, ~~63.1-249, and 63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 2.10; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 6.

Administrative Summons.

22 VAC 40-880-120. Administrative ~~Summons of absent parents and custodial parents.~~

22 VAC 40-880-120. Administrative ~~Summons of absent parents and custodial parents.~~

The department may summons ~~absent~~ obligees, obligors, and custodial-parents to appear in the division's office to provide essential information necessary for the collection of child support.

The department may request the Department of Motor Vehicles to suspend or refuse to renew the driver's license of a party who fails to comply with a subpoena, summons, warrant, or writ of capias relating to paternity or child support proceedings, pursuant to § 46.2-320 of the Code of Virginia.

Statutory Authority

§§ 63.1-25, 63.1-250.1, 63.1-250.1:2, 63.1-263.1, 63.1-249 and 63.1-274.10, and 46.2-320 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 2.11; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 7.

Program Costs.

22 VAC 40-880-130. Costs associated with the provision of child support services.

22 VAC 40-880-130. Costs associated with the provision of child support services.

A. The department may not require custodial parents to pay the costs associated with the provision of child support services, unless contesting genetic test results.

B. The department shall assess and recover fees from the ~~absent-parent~~ parties according to the rules set out in Part XII (22 VAC 40-880-680 et seq.).

Statutory Authority

§§ 63.1-25, ~~63.1-249~~, 63.1-250.1:2, and 63.1-274.10 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 2.12; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

PART IV.

Establishing Child Support Obligations .

ARTICLE 1 Paternity Establishment.

ARTICLE 2 Administrative Support Orders.

ARTICLE 1.

Paternity Establishment.

22 VAC 40-880-170. Establishing paternity.

22 VAC 40-880-170. Establishing paternity.

In order for the department to establish a child support obligation and to enforce and collect child support payments from a putative father, the father must be determined to be legally responsible for the support of the child. In situations in which a putative father has not been legally determined to be the father of the child, paternity must be established before a child support obligation can be administratively ordered or court ordered. The department pursues paternity establishment in accordance with § 63.1-250.1:2 and §§20-49.1 through 20-49.9 of the Code of Virginia.

1. The department shall obtain a sworn statement ~~or statements~~ for each child from the ~~custodial parent~~ mother acknowledging the paternity of the child or children for whom child support is sought.
2. Based on this sworn statement, the department shall attempt to locate the putative father, if necessary, according to the locate time requirements described in Part III (22 VAC 40-880-140 et seq.).
3. Once the putative father is located, the department shall contact him to determine if he is willing to sign a sworn statement voluntarily acknowledging paternity or to voluntarily submit to genetic ~~blood~~ testing to determine paternity.
 - a. The department shall advise the putative father verbally and in writing of his rights and responsibilities regarding child support prior to obtaining a sworn statement of paternity.
 - b. A putative father who signs a sworn statement of paternity along with an acknowledgement from the mother or who, through genetic ~~blood~~ testing, is affirmed by at least a 98% probability to be the father of the child is responsible for the financial support of the child or children.
4. When the putative father does not sign a sworn statement of paternity or does not voluntarily submit to genetic ~~blood~~ testing ~~or the blood test shows less than a 98%~~

~~probability of paternity~~, the department shall order the putative father to submit to genetic testing. If the putative father refuses to comply with the genetic testing order, the department shall petition the court for a paternity determination when there is sufficient evidence to do so.

5. Within 90 calendar days of locating the putative father, the department shall:

a. Obtain a sworn acknowledgement of paternity or arrange for voluntary or mandatory genetic blood testing, for the purpose of establishing paternity, or

b. File a petition with the court for paternity establishment.

6. In any case where more than one putative father has been identified, the department shall pursue paternity for all putative fathers.

~~7. The department shall track all cases in which paternity must be established to assure that, in all cases where the putative father is located, paternity is established or the putative father excluded within one year of the child reaching six months of age or within one year of petitioning the court for paternity, whichever occurs later.~~

Statutory Authority

§§ 20-49.1 through 20-49.9, 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ and 63.1-250.1:2 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 4.1; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 2.

Administrative Support Orders.

22 VAC 40-880-190. Administrative establishment of a child support obligation.

22 VAC 40-880-200. Determining the amount of the child support obligation.

22 VAC 40-880-210. Service of the administrative support order.

22 VAC 40-880-220. Medical support.

22 VAC 40-880-230. Child support guideline.

22 VAC 40-880-240. Administrative deviation from the child support guideline.

22 VAC 40-880-250. Periodic reviews of the child support obligation.

22 VAC 40-880-190. Administrative establishment of a child support obligation.

The department has statutory authority to establish child support obligations through noncourt ordered, legally enforceable ~~administrative means~~ child support orders. These ~~administrative obligations~~ orders have the same force and effect as a support ~~obligation~~ order established by the court. These administrative orders shall contain the information listed in Virginia Code § 63.1-252.1.

A. The amount of child support that is owed and the frequency with which it is paid must be established before the payment of child support can be enforced.

B. The administrative order shall be called the ~~A~~administrative S~~upport~~ Order.

~~C. The department shall use administrative rather than judicial means to establish the child support obligation whenever possible.~~

~~D~~C. The department shall use ~~the means~~ administrative support order to establish a temporary child support obligation when judicial determinations of support are pending due to custody and visitation issues.

~~E~~D. Within 90 calendar days of locating the ~~absent~~ putative father or noncustodial parent, ~~or of establishing paternity~~ and except as shown in paragraph G of this section, the department shall ~~attempt to either ensure that a child support obligation is established~~

either establish an administrative child support order or petition the court to serve the putative father or noncustodial parent to establish a child support obligation, or shall diligently attempt to complete the service of process necessary for an obligation to be ordered.

~~FE.~~ When a court dismisses a petition for a support order without prejudice or an administrative hearings officer overrules an administrative support action, the department shall examine the reasons for the dismissal or overruling ~~and to~~ determine when or if it would be appropriate to seek an order in the future further action is appropriate.

~~F.~~ The child support obligation is established when an ~~A~~administrative S~~upport O~~order has been served and the 10-day appeal period for the administrative order has elapsed.

~~G.~~ A child support obligation shall not be established when the obligor is receiving Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or General Relief (GR) benefits.

Statutory Authority

§ ~~20-108.2, 63.1-25, 63.1-249 and 63.1-274.10~~ 63.1-250.1, 63.1-251, 63.1-252.1, and 63.1-258.3 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 4.3; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-200. Determining the amount of the child support obligation.

A. The administrative child support order obligation shall include information and provisions as set forth in § 63.1-252.1 of the Code of Virginia.

~~1. Frequency with which the current amount owed is to be paid;~~

~~2. Current amount owed; and~~

~~3. Assessment of past public assistance debt arrearage owed to the Commonwealth, if any.~~

B. Verification of financial information and use of ~~F~~financial statements.

1. The department shall use financial statements obtained from the ~~absent parent and the~~ custodial legally responsible parents to determine the amount of the child support obligation and shall verify financial information used to determine child support obligations.

2. The ~~absent~~ legally responsible parents ~~and custodial parent~~ shall complete financial statements upon demand by the department. Such responsible parties shall certify under penalty of perjury the correctness of the statement.

3. If the custodial parent is a recipient of public assistance, the department shall use the information obtained through the ~~AFDC~~ TANF or AFDC/FC eligibility process to meet the financial statement and financial information verification requirements.

4. The department shall define the type of financial information, which shall be required based on § 63.1-274.5 of the Code of Virginia. The department has the authority to request verification of financial information for the purpose of establishing or modifying a child support obligation.

5. When both parents are ~~absent~~ noncustodial, each parent must provide financial information. In this situation, the person with whom the child resides shall not be required to complete a financial statement.

~~6. The department shall obtain financial statements from both absent parents when the custodial parent is not responsible for the support of the child.~~

~~C. Default obligation. When the absent parent does not provide a financial statement and there is no court order and no previously issued administrative order, the department shall~~

~~issue a default Administrative Support Order if the absent parent does not respond to a summons to appear in one of the division's district offices.~~

~~1. The default administrative order shall be based on the USDA estimated annual family expenditures on raising a child in the urban south. Virginia adjusted gross median income shall be used to determine the income level that will be used.~~

~~2. In situations where an obligation is not being established to assess a current obligation, but is assessing past public assistance debt only, the default administrative order shall be based on the amount of public assistance paid on behalf of the absent parent's dependents.~~

D.C. The department shall determine the amount to be paid monthly toward past due support when the obligation is administratively ordered and when a court ordered obligation for support does not specify the amount to be paid toward the past due support. The monthly payment for past due support will be \$65 or 25% of the current obligation, whichever is greater, and shall not exceed the amount allowed under the federal Consumer Credit Protection Act.

Statutory Authority

§§ 20-108.1, 63.1-25, 63.1-250.1, ~~63.1-249~~ and ~~63.1-274.10~~ 63.1-252.1, 63.1-274.5, and 63.1-274.6 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 4.4; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

Cross References

Child support guidelines, 22 VAC 40-880-230

22 VAC 40-880-210. Service of the administrative support order.

The department must legally serve the ~~A~~administrative S~~upport O~~rder on the ~~absent parent obligor~~ or receive a waiver of service from the ~~absent parent~~ in order to have an established obligation. The department shall also provide a copy of this document to the obligee in no less than fourteen days from date of service on the obligor.

Statutory Authority

§§ ~~63.1-25, 63.1-249 and 63.1-274.10~~ and 63.1-252.1 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 4.5; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-220. Medical support.

A. The department shall have the authority to issue orders containing provisions for medical support services for the dependent children of ~~absent parents~~ obligors if the coverage is available at reasonable cost as defined in §63.1-250.1 of the Code of Virginia.

B. The ~~absent parent~~ obligor shall provide information regarding ~~medical support services~~ the availability of or changes in health insurance coverage for his or her dependent children, ~~and spouse or former spouse if applicable, upon request from the department.~~

C. The ~~absent parent~~ obligor shall provide health insurance coverage for the child or children if health insurance is available through his or her employment. The department may enter an administrative order or seek a judicial order requiring the ~~absent parent's~~ obligor's employer to enroll the dependent children in a group health insurance plan or other similar plan providing health insurance coverage offered by the employer as provided in § 20-79.3 of the Code of Virginia.

Statutory Authority

§§ 20-79.3, 20-108.1, 63.1-25₂, ~~and 63.1-274.10~~ 63.1-250.1, and 63.1-252.1 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 4.6; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-230. Child support guideline.

A. The department is ~~required to~~ shall use the child support guideline, which includes the Schedule of Monthly Basic Child Support Obligations and procedures in §§ 20-108.1 and 20-108.2 of the Code of Virginia, in calculating the obligation amounts of administrative child support obligations. Section 20-108.2 of the Code of Virginia is incorporated by reference except for obligations determined as set forth in 22 VAC 40-880-240 for which the presumptive amount will only be used as the initial support calculation.

~~B. The department shall call this schedule the child support scale.~~

~~C. The department shall use the scale in establishing Administrative Support Orders except when a default obligation is established as defined in 22 VAC 40-880-200 C.~~

~~D. The total child support obligation will be divided between both parents in the same proportion as their individual gross incomes bear to their combined gross income.~~

~~E.~~ The department shall consider the following factors in calculating the amount of the obligation:

~~1.~~ The absent parent and custodial parent's gross monthly income from all sources with the exception noted in subsection F of this section;

~~2.~~ The number of children for whom the absent parent and custodial parent share joint legal responsibility;

~~3.~~ Extraordinary medical and dental expenses which are defined in § 20-108.2 of the Code of Virginia;

~~4.~~ The custodial parent's work related child care expenses; and

~~5.~~ Any costs for health insurance coverage as defined in § 63.1-250 of the Code of Virginia when actually paid by a parent or his spouse for the child or children subject to that order.

FB. The department may not include benefits from public assistance programs as defined in § 63.1-87 of the Code of Virginia, Supplemental Security Income, or child support received in calculating the combined gross income.

Statutory Authority

§§ 20-108.1, 20-108.2, 63.1-25, 63.1-249, and 63.1-264.2 ~~63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 4.7; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-240. Administrative deviation from the child support guideline.

There shall be a rebuttable presumption that the amount of child support, which results from the application of the guidelines, is the correct amount of child support pursuant to §§ 20-108.1, 20-108.2 and 63.1-264.2 of the Code of Virginia. ~~if there is evidence that one of the following two conditions exists.~~ Deviations from the guideline shall be allowed as follows:

~~1A. There are~~ A deviation from the gross income of either parent shall be allowed when a parent has other dependent children residing with him or has child support orders for other dependent children for which either parent ~~the custodial or absent parent for whom the custodial or absent parent is legally and financially responsible and who are not included in a child support order.~~

~~2. There are other current child support orders for which the absent or custodial parent is responsible.~~

1. If there is an order in place for such child, the actual amount of the order is allowed.

2. If there is no order in place (i.e., the child lives in the home of either parent) a deviation is allowed equal to the amount of support found in the “Schedule of Basic Monthly Child Support Obligations” for the income of the parent receiving the deviation and the number of children for whom a deviation is allowable as described above.

B. When either parent is found to be voluntarily unemployed or fails to provide financial information upon request, income shall be imputed except as indicated below.

A parent is determined to be voluntarily unemployed when he or she quits a job without good cause or is fired for cause.

1. The current or last available monthly income shall be used to determine the obligation if that income is representative of what the parent could earn or otherwise receive.

2. If actual income is not available, use the federal minimum wage multiplied by 40 hours per week and converted to a monthly amount by multiplying the result by 4.333.

3. Where parents have never been employed, income shall not be imputed.

C. No other deviations from the child support guidelines may be made in establishing or adjusting administrative support orders, or reviewing court orders. Should potential deviation factors exist, as stated in Virginia Code § 20-108.1, refer the case to court for additional action.

Statutory Authority

§§ 20-108.1, 20-108.2, 63.1-25, 63.1-249, and 63.1-264.2 and ~~63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 4.8; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-250. Periodic reviews of the child support obligation.

The amount of the child support obligation is based on the financial situation of both parents. ~~The department or the courts, depending on who issued the order, may modify the amount of the obligation if either parent's situation changes.~~ The department, another state's child support agency or either parent may initiate a review of the amount of the child support obligation.

A. The department shall initiate a review of each child support obligation and adjust the order as required by federal regulations.

B. Either parent may request a review of the child support obligation once every three years. Additional requests may be made earlier by providing documentation of a ~~change in~~ special circumstance that has occurred which potentially affecting affects the child support obligation. Such changes shall be limited to:

1. an additional child needs to be covered by the order,
2. a child needs to be removed when another child remains covered by the order,
3. a provision for health care coverage needs to be added, or
4. a change can be documented by the requesting party of at least 25%;
 - (a) in the income of either party,
 - (b) the amount of medical insurance,
 - (c) dependent care,
 - (d) or extraordinary medical expenses.

C. The department shall ~~modify~~ adjust an administrative obligation when the results of the review indicate a change ~~in the gross income of either parent which is a difference of~~ at least 10% in ~~either parent's gross monthly income or a change in the monthly~~ obligation ~~of at least~~ but not less than \$25.

D. The department shall modify the obligation for future child support payments only.

E. The department ~~shall petition to modify~~ may initiate a review of a court ordered obligation pursuant to §§ 20-108.2 and 63.1-252.2 of the Code of Virginia based on the criteria above or on criteria established by a court.

Statutory Authority

§§ 20-108.2, 63.1-25, 63.1-249, 63.1-250.1, 63.1-252.1 and 63.1-252.2 and ~~63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 4.9; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

PART V.

Enforcing Child Support Obligations.

ARTICLE 1 General.

ARTICLE 2 Immediate and Voluntary Withholding of Earnings.

ARTICLE 3 Other Enforcement Remedies.

ARTICLE 4 Federal Enforcement Remedies.

ARTICLE 1.

General.

22 VAC 40-880-260. Enforcement ~~rules~~.

22 VAC 40-880-270. Withholding of ~~earnings~~ income ~~rules~~.

22 VAC 40-880-260. Enforcement ~~rules~~.

A. The department shall, whenever possible, administratively enforce compliance with established child support orders including both administrative and court orders.

B. The department shall enforce child support orders at the time the Administrative Support Order is initially entered through the use of an income withholding order. ~~one of the following methods of wage withholdings:~~

~~1. Immediate withholding of earnings; or~~

~~2. Voluntary assignment of earnings.~~

C. The department shall enforce child support orders when the obligation becomes delinquent through the use of one or more of the following administrative enforcement remedies:

~~1. Mandatory withholding of earnings~~ Income withholding order;

2. Liens;
3. Orders to withhold and deliver;
4. Foreclosure;
5. Distrain, seizure, and sale;
6. Unemployment compensation benefits intercept;
7. Bonds, securities, and guarantees;
8. Tax intercept;
9. Internal Revenue Service full collection service;
10. Credit bureau reporting; ~~or~~
11. Enforcement remedies for federal employees;
12. Occupational and professional license suspensions;
13. Driver's license suspension;

14. Recreational or sporting license suspensions; or

15. Financial Institution Data Match

D. The department shall attempt to enforce current and delinquent child support payments through administrative means before petitioning the court for enforcement action unless it determines that court action is more appropriate.

E. The department shall take ~~any~~ appropriate enforcement action, unless service of process is necessary, within ~~no more than~~ 30 calendar days of identifying a delinquency or of locating ~~that absent~~ a noncustodial parent, whichever occurs later, ~~except income withholding and federal and state income tax refund offset.~~

F. The department shall take appropriate enforcement action if service of process is necessary within 60 calendar days of identifying a delinquency or of locating ~~the absent a~~ noncustodial parent, whichever occurs later.

G. The department shall take appropriate enforcement action within the above timeframes to enforce health insurance coverage.

H. When an enforcement action is unsuccessful, the department shall examine the reason or reasons and determine when it would be appropriate to take an enforcement action in the future. The department shall take further enforcement action at a time and in a manner determined appropriate by department staff.

I. The department shall use high-volume administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedures to the requesting state, pursuant to 42 U.S.C. 666(a)(14).

Statutory Authority

§§ 46.2-320, 63.1-25, 63.1-250.3, 63.1-254, 63.1-255, 63.1-256, 63.1-258.1, 63.1-260, 63.1-261, 63.1-262, 63.1-263, and 63.1-263.1 ~~63.1-249 and 63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.1; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-270. Withholding of earnings income rules.

A. The department ~~may~~ shall issue a an income withholding of earnings order against all ~~earnings income~~ income except ~~those income~~ income exempted from garnishment under federal and state law.

B. The amount of money withheld from disposable earnings may not ~~be more than~~ exceed the amount allowed under the federal Consumer Credit Protection Act. That

amount is 50, 55, 60 or 65%, depending on the number of weeks of delinquency, and if the NCP is responsible for other dependents. (§ 34-29 of the Code of Virginia).

C. The department must serve the ~~wage~~ income withholding order on the ~~absent parent or~~ receive a waiver of service from the individual employer. Upon service of the order on the employer by certified mail, or by electronic means, including facsimile transmission, a copy of the order shall be provided to the employee by the employer.

D. The department shall modify the income withholding ~~of earnings~~ order only if there is a change in the amount of the current support or past due support.

E. The department shall release the income withholding ~~of earnings~~ order only if one of the following occurs:

1. The current support ~~obligation~~ order terminates, and any past due support is paid in full;
2. Only past due support is owed and it is paid in full;
3. The whereabouts of the child or child and caretaker become unknown;
4. Bankruptcy laws require release; or

5. A nonpublic assistance ~~client~~ applicant/recipient no longer wants the services of the department and no debt is owed to the Commonwealth.

Statutory Authority

§§ 20-79.1, 20-79.2, 20-79.3, 20-88.32, 20-88.64, 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ 63.1-250.3, 63.1-257, and 63.1-258.1 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.2; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 2.

Immediate and Voluntary Income Withholding of Earnings Enforcement Remedies

22 VAC 40-880-280. ~~General~~ Withholding of Income-Administrative Support Orders.

22 VAC 40-880-290. ~~Immediate withholding of earnings~~ Determining the amount to be applied toward past due support.

22 VAC 40-880-300. ~~Voluntary withholding of earnings.~~ Alternate Payment Arrangement.

22 VAC 40-880-280. General Withholding of Income -Administrative Support Orders.

The ~~A~~administrative ~~S~~support ~~O~~order shall include a requirement for immediate withholding of the child support obligation from the ~~absent~~ noncustodial parent's ~~earnings~~ income unless the parties agree in writing to an alternate payment arrangement, or good cause is determined by the department for not implementing an immediate withholding, pursuant to 42 U.S.C. 666(a)(8)(B)(i) and § 63.1-258.1 of the Code of Virginia. ~~The custodial parent and absent parent may choose a voluntary assignment of earnings as an alternate arrangement for payment of child support.~~

Statutory Authority

§§ ~~63.1-25, 63.1-249 and 63.1-274.10~~ and 63.1-258.1 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.3; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-290. ~~Immediate withholding of earnings~~ Determining the amount to be applied toward past due support.

~~The Administrative Support Order shall include a requirement for immediate withholding of the child support obligation from the absent parent's earnings unless the absent parent and the department, on behalf of the custodial parent, agree to an alternative arrangement, or good cause is shown.~~

The department shall collect any court ordered amount to be paid towards past due support. If the order does not specify an amount to be paid toward past due support, the department shall determine the amount to be paid monthly toward past due support. The monthly payment for past due support will be \$65.00 or 25 percent of the current obligation, whichever is greater. For disposable earnings, the total amount withheld shall not exceed the amount allowed under the Consumer Credit Protection Act. (§ 34-29 of the Code of Virginia)

Statutory Authority

§§ 34-29, 63.1-25, ~~63.1-249 and 63.1-274.10~~ and 63.1-250.2 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.4; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-300. ~~Voluntary withholding of earnings.~~ Alternative Payment

Arrangement.

The custodial parent and ~~absent~~ noncustodial parent may mutually choose ~~a voluntary~~ assignment of earnings an alternative payment arrangement at the time the obligation is established as an alternate to immediate withholding of ~~earnings~~ income for payment of child support.

~~B. Voluntary withholding of earnings income is also called voluntary assignment of earnings income. The department may initiate a voluntary assignment of income when it is the most expeditious means of enforcing an income withholding.~~

~~C. The department may initiate a voluntary assignment of earnings when it is the most expeditious means of enforcing a wage withholding.~~

~~D. The absent parent may not choose a voluntary assignment of earnings as an alternative to mandatory withholding of earnings after enforcement action has been initiated.~~

Statutory Authority

45 CFR §303.100, §§ 63.1-25, 63.1-249 and 63.1-274.10- 20.79.1, 20.79.2, 63.1-258.1, and 63.1.272 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.5; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 3.

Other Enforcement Remedies.

22 VAC 40-880-320. ~~Mandatory~~ Initiated withholding of earnings.

22 VAC 40-880-330. Liens.

22 VAC 40-880-340. Orders to withhold and deliver.

22 VAC 40-880-350. Distrain, seizure, and sale.

22 VAC 40-880-360. Unemployment compensation benefits intercept.

22 VAC 40-880-370. Bonds, securities, and guarantees.

22 VAC 40-880-380. Tax intercept.

22 VAC 40-880-385. License suspension.

22 VAC 40-880-320. ~~Mandatory~~ Initiated withholding of earnings income.

The department shall send a ~~Mandatory an Income W~~withholding of ~~Earnings~~ order to an employer requiring the deduction of the child support obligation from the ~~absent noncustodial~~ parent's ~~earnings~~ income under the following circumstances:

1. When a payment is delinquent in an amount equal to or exceeding one month's child support obligation, or
2. When ~~the custodial~~ either parent requests that withholding begin regardless of whether past due support is owed or support payments are in arrears.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.6; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-330. Liens.

A. A lien arises by operation of law for overdue support, pursuant to 42 U.S.C. 666(a)(4)(A) and ~~The~~ department may file a lien on the real or personal property of the ~~absent noncustodial parent when there is past due support owed.~~ the Division has:

1. issued an administrative support order, or
2. received a Virginia court order, or
3. received a support order from a jurisdiction outside of Virginia.

~~B. Upon receipt of a support order from a jurisdiction outside of Virginia, the department may immediately file a lien.~~

~~C. B. The~~ Any lien of the department shall have the priority of a secured creditor.

~~D. C. The~~ Any lien of the department shall be subordinate to the lien of any prior mortgagee.

~~E. D. The~~ Any lien shall be released when the past due support has been paid in full.

Statutory Authority

§§ ~~63.1-25, 63.1-249 and 63.1-274.10~~ 63.1-254 and 63.1-266 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.7; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-340. Orders to withhold and deliver.

A. The department may use orders to withhold and deliver to collect assets such as bank accounts, trust funds, stocks, bonds and other types of financial holdings when past due support is owed.

B. The department may use high-volume administrative enforcement (AEI) in response to a request made by another state to enforce support orders by using orders to withhold and delivery to collect assets such as bank accounts, trust funds, stocks, bonds, and other types of financial holdings when past due support is owed. The department shall promptly report the results of such enforcement procedure to the requesting state.

~~B. C.~~ C. The department shall release the order to withhold when the order cannot be served on the ~~absent~~ noncustodial parent

€ D. The department shall release the order to deliver when:

1. The past due support is paid, or

2. The ~~absent~~ noncustodial parent makes satisfactory alternate arrangements for paying the full amount of the past due support.

Statutory Authority

§§ 63.1-25, 63.1-249 and 63.1-274.10 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.8; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-360. Unemployment compensation benefits intercept.

The department may intercept unemployment compensation benefits ~~when there is past due~~ for support within the limits set by the federal Consumer Credit Protection Act pursuant to 15 U.S.C. 1673(b) and § 34-29 of the Code of Virginia.

~~B. The department may, with the consent of the absent parent, intercept unemployment compensation benefits when there is not past due support owed.~~

~~C. The department may intercept unemployment compensation benefits paid by the Commonwealth to an absent parent who lives out of state.~~

~~D. The department shall intercept the amount of benefits allowed by the federal Consumer Credit Protection Act.~~

Statutory Authority

§§ 34-29 and 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.10; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-370. Bonds, securities, and guarantees.

The department shall use administrative bonds, securities, and guarantees as an enforcement action only if the amount of the delinquency exceeds \$1,000 and:

1. After all other enforcement actions fail; or

2. When no other enforcement actions are feasible.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ and 63.1-250.4 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.11; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-380. Tax Intercept.

~~A.~~ The department shall intercept state and federal income tax refunds, ~~and shall apply these moneys, in whole or in part, first to any debt of the Commonwealth and second to pay any amount owed to the custodial parent.~~

~~B.A.~~ The Virginia Department of Taxation prescribes rules for interception of state tax refunds and notification to the person whose state tax refund is being intercepted.

1. The department may retain moneys up to the amount owed on the due date of the finalization notice from the department to the Virginia Department of Taxation.

2. The department may intercept state tax refunds when the delinquent amount equals at least \$25.

3. State tax refund intercepts shall be disbursed in the same manner as support payments. Federal tax intercepts shall be disbursed as required pursuant to 42 U.S.C. 664.

~~3.4.~~ The department may not disburse the intercepted state taxes if the ~~absent~~ noncustodial parent has appealed the intercept action and the appeal is pending.

4.5. The department shall issue a refund to the ~~absent~~ noncustodial parent when one of the following occurs:

- a. The intercept was made in error;
- b. The absent noncustodial parent pays the delinquent amount in full after the Department of Taxation has been notified of the delinquency and before the tax refund is intercepted; or
- c. ~~Either or both federal and state tax refunds are intercepted, the~~ The total amount intercepted is more than the amount of the delinquency at the time that notification of the tax intercept ~~was sent to~~ is received from the Department of Taxation, and the ~~absent~~ noncustodial parent does not agree to allow the department to apply the excess funds to any delinquency that accrued after certification for tax intercept.

C.B. The Internal Revenue Service has prescribed rules regarding the interception of federal tax refunds. 45 CFR 302.60 and 303.72 are incorporated by reference in this chapter.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~, and ~~63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.12; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-385. License Suspension.

A. The department may petition the court to suspend any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation pursuant to 42 U.S.C. 666(a)(16) and § 63.1-263.1 of the Code of Virginia.

B. The department may request the Department of Motor Vehicles to suspend or refuse to renew the driver's license of an obligor pursuant to 42 U.S.C. 666(a)(16) and § 46.2-320 of the Code of Virginia.

C. The department may petition the court to suspend any recreation or sporting activity license issued to an obligor pursuant to 42 U.S.C. 666(a)(16) and § 63.1-263.1 of the Code of Virginia.

Statutory Authority

§§ 46.2-320, 63.1-25, and 63.1-263.1 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.12; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-410. Enforcement remedies to be used against federal employees.

A. The department may apply its enforcement remedies against United States military and civilian active and retired personnel.

B. When enforcement under Virginia law is ~~not possible~~ unsuccessful, the department may use ~~(i) mandatory military allotments and (ii) involuntary child support allotments for public health services employees~~ to enforce ~~child~~ support obligations of certain federal employees, including active military personnel and public health services employees.

1. For the purposes of these ~~two~~ enforcement actions, delinquency shall be defined as failure of the ~~absent~~ noncustodial parent to make ~~child~~ support payments equal to the amount due for two months.

2. The amount of money withheld from these wages shall be up to the amount allowed under the federal Consumer Credit Protection Act pursuant to 15 U.S.C. 1673(b) and § 34-29 of the Code of Virginia.

Statutory Authority

§§ ~~63.1-25, 63.1-249 and 63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 5.14; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

PART VI.

Administrative Appeals.

22 VAC 40-880-420. Appeal rules.

22 VAC 40-880-430. Validity of the appeal.

22 VAC 40-880-440. General rules.

22 VAC 40-880-450. Appeal of enforcement actions.

22 VAC 40-880-460. Appeal of federal enforcement remedies.

22 VAC 40-880-430. Validity of the appeal.

A. The department shall determine the validity of an appeal.

1. The appeal must be in writing.

2. If the appeal is personally delivered, the appeal must be received within 10 working days of service ~~when personally delivered~~ of the notice of the proposed action on the appellant.

3. If mailed, the postmark must be ~~no later than~~ within 10 working business days from the date of service of the notice of the proposed action on the appellant.

B. The only exception to this shall be appeals of federal and state tax intercepts. The ~~absent parent~~ appellant shall have 30 days to appeal a tax intercept notice to the department.

Statutory Authority

§§ 63.1-25, ~~63.1-249 and 63.1-274.10~~ 63.1-252.1, 63.1-256, and 63.1-267.1 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 6.1; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

VAC 40-880-440. General rules.

A. The appeal shall be heard by a hearing officer.

1. The hearing officer ~~shall~~ may hold the hearing by telephone or in the district office where the custodial parent or his or her case resides unless another location is requested by the ~~absent appellant~~. ~~and it complies with § 63.1-267.1 of the Code of Virginia.~~

2. The ~~absent parent and the custodial parent~~ parties may be represented at the hearing by legal counsel.

3. The ~~absent parent~~ appellant may withdraw the appeal at any time. The department may withdraw its actions at any time, such as when a case review reveals new information or that prior action taken was incorrect.

4. The hearing officer shall accept a request for a continuance from the ~~absent~~ noncustodial parent or the custodial parent if:

a. The request is made in writing at least five ~~working~~ business days prior to the hearing, and

b. The request is for not more than a 10-day continuance, except when the facts presented justify an exception.

B. The hearing officer shall notify the ~~absent parent and custodial parent~~ parties of the date and time of the hearing ~~and of the disposition of the hearing~~ in accordance with § 63.1-267.1 of the Code of Virginia.

C. Prior to the hearing, the hearing officer shall send the ~~absent parent and the custodial parent~~ parties a copy of the case Summary of Facts prepared by the district office.

D. The hearing officer shall ~~provide~~ serve the ~~absent parent and the custodial parent~~ appellant and mail the other party ~~with~~ a copy of the hearing officer's decision either at the time of the hearing or no later than 45 days from the date the appeal request was first received by the department.

E. The hearing officer shall notify the ~~absent parent and the custodial parent~~ parties in writing by certified mail if the appeal is determined to be abandoned because the ~~absent contesting parent~~ appellant did not appear at the hearing.

F. ~~The absent parent or the custodial parent parties may appeal the hearings officer's decision to the juvenile and domestic relations district court within 10 calendar days of receipt of the hearings officer's decision. An appeal of a tax intercept must be made to the circuit court within 30 days of the date of the hearing officer's decision.~~

F. Either party may appeal the hearing officer's decision as follows:

1. For cases under the setoff debt collection act, to the circuit court on the record within 30 days of the date of the decision.
2. For all other cases, to the juvenile and domestic relations district court *de novo* within 10 calendar days of receipt of the decision.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ 63.1-267.1, 63.1-250.3, 63.1-268.1 and 20-79.1, 58.1-526, 58.1-527 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 6.2; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

PART VII

Interstate Responsibilities

22 VAC 40-880-480. Cooperation with other state IV-D agencies.

When the ~~absent~~ noncustodial parent and the custodial parent reside in different states, cooperation between these state agencies may be necessary.

A. The department shall provide the same services to other state IV-D cases that it provides to its own cases with the following conditions:

1. The request for services must be in writing; and
2. The request for services must list the specific services needed.

B. The department shall request in writing the services of other state IV-D agencies when ~~the custodial~~ one parent resides in Virginia, but the ~~absent~~ other parent resides in another state.

C. Other department responsibilities in providing services to other state IV-D cases and obtaining services from other state IV-D agencies are defined in 45 CFR §303.7 and §§ 63.1-274.6 and ~~20-88.22~~ 20-88.32 through 20-88.82 of the Code of Virginia. ~~These regulations are incorporated by reference here.~~

Statutory Authority

§§ 20-88.32-20-88.82, 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ and 63.1-274.6 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 7.2; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-490. Central registry.

A. The department shall manage the flow of interstate correspondence through a Central Registry located in the division's central office. Correspondence will be handled according to the rules established by the state and federal regulations cited by reference above.

B. The Central Registry shall act as the Uniform ~~Reciprocal Enforcement of Interstate~~ Family Support Act State Information Agent required by §§ ~~20-88.22~~ 63.1-274.6 and 20-88.32 through 20-88.82 of the Code of Virginia.

Statutory Authority

§§ 20-88.32 through 20-88.82, ~~63.1-25, 63.1-249 and 63.1-274.10~~ and 63.1-274.6 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 7.3; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

PART VIII.

Confidentiality and Exchange of Information.

ARTICLE 1 Information Collected by the Department.

ARTICLE 2 Information Released by the Department.

ARTICLE 1.

Information Collected by the Department.

22 VAC 40-880-500. Information collected from state, county, and city offices.

22 VAC 40-880-510. Subpoena of financial information.

22 VAC 40-880-500. Information collected from state, county, and city offices.

A. The department may request and shall receive from Sstate, county, ~~and city offices,~~
and local agencies within and without the Commonwealth ~~shall provide the~~
~~department with~~ information about ~~absent~~ noncustodial parents.

B. The department shall use this information to locate and collect child support
payments from ~~absent~~ noncustodial parents.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~, and ~~63.1-274.10~~, and 63.1-274.6 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 8.2; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-510. Subpoena of financial information.

The department may subpoena financial records ~~of~~, or other information relating to, the obligor and obligee from a person, firm, corporation, association, political subdivision, or state agency to establish or enforce the collection of child support. A civil penalty not to exceed \$1,000 may be assessed for failure to respond to a subpoena, pursuant to 42 U.S.C. 666 (c) (1)(B) and § 63.1-250.1 of the Code of Virginia.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~, and ~~63.1-274.10~~, and 63.1-250.1 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 8.2; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

Article 2

Information Released by the Department

22 VAC 40-880-520. Agencies to whom the department releases information.

A. The department may release information on ~~absent or custodial~~ the parents as set forth in 45 CFR §303.21, to courts and other state child support agencies for the purpose of establishing or enforcing a child support order.

B. The department ~~shall~~ may release information ~~concerning the absent parent to consumer credit agencies upon their request~~ directly bearing on the identity and whereabouts of a noncustodial parent or putative father to public officials and agencies seeking to locate obligors for the purpose of enforcing child support obligations including but not limited to the Attorney General, law enforcement agencies, prosecuting attorneys, courts of competent jurisdiction and agencies in other states engaged in the enforcement of support of children and their caretakers.

C. The department may provide information on the ~~absent~~ noncustodial or custodial parent to an entity other than the ones listed above with the written permission of that parent. However, with exception that the department ~~shall~~ may not release information regarding the ~~absent~~ noncustodial parent's debt to private collection agencies, if it deems such disclosure inappropriate.

D. The department shall release information concerning ~~custodial parents' and absent~~ parents' medical support payments and medical support orders to the Department of Medical Assistance Services.

Statutory Authority

§§ 20-87.1, 63.1-25, ~~63.1-249 and 63.1-274.10~~ and 63.1-274.6 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 8.3; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-550. Requests for information from ~~absent~~ parents and ~~custodial~~ parents.

A. The department shall release, upon request from ~~the absent parent or custodial~~ either parent, copies of court orders, administrative orders, enforcement actions, fiscal records, and financial information used to calculate the obligation. However, when a protective

order has been issued or there is a risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be released. ~~If both parents are absent, financial information will not be released to the other parent.~~

B. The department shall release to ~~the absent parent and to the custodial~~ either parent personal information contained in the case record, which pertains to the individual requesting the information with one exception. The department may not release medical or psychological information for which the physician providing the information has stated the individual should not have access.

C. Either ~~The absent parent and the custodial~~ parent may correct, challenge, or explain the personal information which pertains to that individual and may challenge the financial information of the other parent.

D. The department shall charge a fee for copying case record information. The department shall base the fee on the cost of copying the material.

Statutory Authority

§§ 2.1-382, 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ 63.1-250.1, and 63.1-252.1 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 8.6; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-560. Release of health insurance information.

The department shall provide specific third party liability information to the Department of Medical Assistance Services in order for that agency to pursue the ~~absent~~ noncustodial parent's health insurance provider for any Medicaid funds expended for his or her dependents who are receiving TANF ~~AFDC~~ or AFDC/FC or who are Medicaid-only clients.

A. The department shall release health insurance coverage information on ~~AFDC~~ TANF, AFDC/FC, and Medicaid only cases to the Department of Medical Assistance Services as prescribed in the cooperative agreement between the department and that agency.

B. The department shall release health insurance coverage information on ~~AFDC~~ TANF, AFDC/FC, and Medicaid only cases to other state child support agencies upon their request.

~~C. The department shall release information on health insurance coverage for nonpublic assistance cases only with the consent of the custodial parent~~

Statutory Authority

§§ 63.1-25, 63.1-249, 63.1-250.1, of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 8.7; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

PART IX

**Rights and Responsibilities of the ~~Custodial Parent~~ Applicant/Recipient and of the
Department.**

PART X.

ARTICLE 2.

Processing Support Payments

- | | |
|--------------------|--|
| 22 VAC 40-880-630. | Bad checks. |
| 22 VAC 40-880-640. | Erroneous or duplicate disbursements. |
| 22 VAC 40-880-650. | Methods of payment recovery from the custodial parent. |

22 VAC 40-880-650. Methods of payment recovery from the custodial parent.

A. If the custodial parent is not an ~~AFDC~~ TANF or AFDC/FC recipient, the department shall:

1. Intercept and retain payments for past due support; (arrear) by retaining the lesser of the balance due or 100% of any intercepted funds and any amounts seized from bank accounts, and

2. Retain 10% of the current support payment;

~~3. Retain the lesser of the balance due or 100% of any intercepted funds; or~~

~~4. Retain the lesser of the balance due or funds seized from bank accounts.~~

B. If the custodial parent is ~~an AFDC~~ a TANF or AFDC/FC recipient and retains an erroneous payment, the division shall notify the Division of ~~Benefit Programs~~ Temporary Assistance Program ~~when an erroneous or duplicate payment has been retained by the client.~~

Statutory Authority

§§ 63.1-25, ~~63.1-249~~ and ~~63.1-274.10~~ of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 10.4; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

ARTICLE 3.

PART XI.

Case Closure.

22 VAC 40-880-670. General rules.

22 VAC 40-880-670. General rules.

A. The department shall terminate child support enforcement services when one of the criteria defined in the 45 CFR 303.11 is met.

~~B. Sixty calendar days prior to closing a case, the department shall notify the custodial parent of its intent to close the case and shall give the reason for the case closure with the exceptions noted in the 45 CFR 303.11. The department shall not close the case if the custodial parent supplies additional case information.~~

C. B. The department shall continue to provide collection and disbursement services until alternate arrangement for these services has been made.

~~D. The department shall reopen a closed case if the custodial parent requests the case be reopened because there is a change in circumstance which could lead to the establishment or enforcement of a child support obligation.~~

~~E. The department shall purge all closed case records three years after the case is closed pursuant to the 45 CFR 74(D).~~

Statutory Authority

~~§§ 63.1-25, 63.1-249 and 63.1-274.10 of the Code of Virginia.~~

Historical Notes

Derived from VR615-70-17 § 11.1; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

PART XII.

Cost Recovery.

ARTICLE 1.

General.

22 VAC 40-880-680. Recovery of fees.

22 VAC 40-880-690. Attorney's fees for enforcement.

22 VAC 40-880-700. Genetic blood testing.

22 VAC 40-880-710. Intercept programs.

22 VAC 40-880-680. Recovery of fees.

A. The department shall assess and recover from the ~~absent~~ noncustodial parent:

1. Attorney's fees;

2. Genetic ~~blood~~ testing fees for paternity establishment; and

3. Intercept programs' costs.

B. The department shall use any mechanism provided in Title 63.1 of the Code of Virginia to enforce these fees and costs.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~ and 63.1-274.10 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 12.1; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

VAC 40-880-700. Genetic ~~blood~~ testing.

A. The department shall set the costs of the genetic ~~blood~~-testing for paternity establishment at a rate charged the department by the provider of genetic ~~blood~~ testing services.

B. Where an original genetic test for paternity establishment is contested and either party requests additional testing, the department may require advance payment by the contestant.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~ 63.1-250.1:2 and 63.1-274.10 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 12.3; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

22 VAC 40-880-720. Service of Process, Seizure and Sale

The department shall have the authority to charge the noncustodial parent the actual costs for service of process, and seizure and sale pursuant to a levy on a judgement in enforcement actions, per § 63.1-274.10 of the Code of Virginia.

Statutory Authority

§§ 63.1-25, ~~63.1-249~~ and 63.1-274.10 of the Code of Virginia.

Historical Notes

Derived from VR615-70-17 § 12.3; eff. February 28, 1990; amended, Virginia Register Volume 6, Issue 26, eff. October 24, 1990; Volume 7, Issue 15, eff. July 1, 1991; Volume 8, Issue 4, eff. July 1, 1992; Volume 8, Issue 19, eff. July 15, 1992.

FORMS

~~Application for Child Support Enforcement Services, 032-11-511/5.~~

~~Financial Statement, 032-11-577/7.~~

~~Health Care Coverage Letter/Employer, 032-11-723 (eff. 7/88).~~

~~Health Care Coverage Letter/CP, 032-11-724.~~